MONTANA LEGISLATIVE HISTORY

Chapter 635 19 79

Bill H 248 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1/23	C	Hearing Date(s)	3/01	C
		C		3/06	C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

There are no free conference or conference committee minutes.

CHAPTER NO. 635

HOUSE BILL NO. 248

INTRODUCED BY MENAHAN

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

IN THE HOUSE

January 18, 1979	Introduced and referred to Committee on Judiciary.
January 29, 1979	Committee recommend bill do pass as amended. Report adopted.
January 30, 1979	Printed and placed on members' desks.
January 31, 1979	Second reading, do pass as amended.
February 1, 1979	Correctly engrossed.
February 2, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 3, 1979	Introduced and referred to Committee on Judiciary.
March 10, 1979	Committee recommend bill be concurred in as amended. Report adopted.
	Statement of Intent adopted.
March 13, 1979	Second reading, pass consideration.
March 14, 1979	Second reading, concurred in.
March 17, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 19, 1979	Returned from second house. Concurred in as amended with Intent statement.
March 20, 1979	On motion consideration passed until the 71st legislative day.
March 28, 1979	Second reading, amendments rejected.
	On motion Free Joint Conference Committee requested.
	Free Joint Conference Committee appointed.
April 12, 1979	Free Joint Conference Committee reported.
April 13, 1979	Second reading, adopted.
April 16, 1979	Third reading, pass consideration.
April 17, 1979	Third reading, adopted.
	Second house, adopted.
April 18, 1979	Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 248

INTRODUCED BY Menahan

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM; AMENDING SECTIONS 45-7-306, 46-23-401 THROUGH 46-23-405, 46-23-411 THROUGH 46-23-413, AND 46-23-415 THROUGH 46-23-426, MCA; AND REPEALING SECTION 46-23-414, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-401, MCA, is amended to read:

"46-23-401. Definitions. Unless ~~the context requires~~ otherwise specified, ~~in this part~~ the following definitions apply in this part:

(1) "Applicant" means any prisoner who has ~~signed an application~~ applied to participate in the prisoner furlough program.

(2) "Application" means the forms provided by the department accompanied by supporting documents.

~~(2)~~(3) "Board" means the board of pardons provided for in 2-15-2302.

~~(3)~~(4) "Department" means the department of institutions provided for in 2-15-2301.

~~(4) "Jail" means any county jail or tribal jail.~~

(5) "Escape" means an unexcused departure from supervision or approved activity by a prisoner on furlough.

(6) "Furlough" means a prisoner's participation in a work, school, or treatment program not within prison prior to the prisoner's release on parole.

(7) "Plan" means a complete program of furlough activity proposed by a prisoner.

(8) "Prison" means a correctional facility for adults which is under the direction of or under contract with the department.

~~(5)~~(9) "Prisoner" means a person sentenced by a ~~district~~ court of this state to a term of confinement in the state prison.

~~(6) "State prison" means the Montana state prison at Deer Lodge and any adult correctional facility under the direction of the department.~~

~~(7)~~(10) "Supervising agency" means ~~any federal, state, county, local, or private agency, Indian tribe and reservation, or~~ any person, group, ~~association, or organization~~ agency approved by the department to undertake and maintain the supervision of ~~prisoners participating in the~~ a prisoner on furlough program."

Section 2. Section 46-23-402, MCA, is amended to read:

"46-23-402. Purpose of prisoner furlough program. (1) The purpose and intent of this part is to:

(a) establish a program under the direction of the department for the rehabilitation, education, and ~~betterment~~ advancement of selected ~~prisoners--confined--in-the-state~~ persons serving sentences in ~~prison---placing---the establishment--regulation--guidance--and--control-of-such program--under--the---direction---of---the---department---of institutions;~~

(b) ~~increase--their--responsibility-to-society~~ provide qualified persons with the opportunity to become more responsible members of society by aiding in the support of their dependents and/or continuing their education and training;

(c) ~~provide--for--the--minimum-hourly-wage-required-by law-or-the-prevailing-rate-of-pay-for--persons--employed--in similar--occupations-by-the-same-employer-to-be-paid-to-said convicts-while-so-employed~~ help relieve the substantial cost to the state of providing for the care and needs of selected persons~~;~~.

~~(d)--make-it-possible-that-they-may-work--gainfully--to support--their--dependents-in-whole-or-in-part-while-serving their-sentences,-continue-their-education-or--training,--and at--the-same-time-fulfill-the-obligations-of-the-sentence-of imprisonment-imposed.~~

(2) The ~~prisoner~~ furlough program shall ~~operate--by supplementing-and-not-replacing-established-penal-procedures~~

~~now--or--hereafter--established--by--law--and-shall-serve-to extend-the-limits-of-confinement-for-treatment--as--well--as jurisdictional--purposes~~ be considered an extension of the boundaries of confinement of selected persons.

(3) This part is to be liberally construed to effect the overall objectives set forth in this section."

Section 3. Section 46-23-403, MCA, is amended to read:

"46-23-403. Prisoner not agent or involuntary servant. No prisoner ~~in--the-community-under-the-provisions-of-this part~~ on furlough may be considered ~~to--be~~ an agent or involuntary servant of the department or of ~~the~~ his supervising agency ~~while-released-from-confinement--pursuant to--the--terms--of--the-furlough-program~~. Abuse of authority over a prisoner on furlough by a state officer is official misconduct punishable as provided in 45-7-401. Mistreatment of a prisoner on furlough by a state officer is punishable as provided in 45-5-204."

Section 4. Section 46-23-404, MCA, is amended to read:

"46-23-404. ~~No---effect~~ Effect on eligibility for parole. ~~Nothing-in-this-part-shall-be--construed--to--affect eligibility--for--parole~~. Time served ~~in--the~~ on furlough ~~program~~ shall be considered ~~as--a~~ part of the ~~imposed~~ prisoner's sentence ~~of--such--prisoner~~. Good time shall accrue as provided in 53-30-105."

Section 5. Section 46-23-405, MCA, is amended to read:

"46-23-405. Establishing program -- rules. The department is authorized and directed to establish a furlough program and make rules in accordance with Title 2, chapter 4, to implement and control the ~~same~~ program. Rules shall include ~~provisions~~ guidelines for:

(1) ~~working-at-paid-employment-for-a-rate-of--pay--not less--than-the-minimum-hourly-wage-as-required-by-law-or-the prevailing-rate-of--pay--for--persons--employed--in--similar occupations-by-the-same-employer~~ prisoner eligibility;

(2) participating in an educational, treatment, or training program;

(3) financial arrangements with respect to paid employment and/or residence housing;

~~(3)~~(4) approval of supervising ~~agency~~ agencies; and

~~(4)~~(5) review of ~~determinations----in~~ furlough ~~application~~ applications."

Section 6. Section 46-23-411, MCA, is amended to read:

"46-23-411. Application to participate -- eligibility. Any prisoner ~~confined-in-the-state-prison,~~ except a prisoner serving a sentence imposed under 46-18-202(2), may ~~make~~ submit an application to participate in the furlough program ~~at--least--by-the-time-the-inmate-has-served-one-half-of-the time-required-to-be-considered-for-parole~~ if he is within 2 years of his parole eligibility or discharge date and qualifies under the rules established by the department.

However, if a prisoner is returned on a parole violation and the board determines that his parole will be revoked and that he will be ineligible to reapply for parole, he is not eligible to participate in the furlough program."

Section 7. Section 46-23-412, MCA, is amended to read:

"46-23-412. Board's action on application. (1) ~~At-the meeting-of-the-board-following-the-signing-of-any-prisoner's application,--the~~ The board shall approve or deny the application of each prisoner after careful study of the prisoner's furlough ~~plans~~ plan, criminal history, and all other pertinent case material. The ~~following-rules-shall-be observed-when-the~~ board shall observe the following rules when it meets to consider an application:

(a) Each applicant may call two witnesses from outside or inside the institution to testify ~~as~~ with respect to the applicant's general attitude, participation in self-help activities, ~~or-his~~ character, or job references.

(b) An applicant may ~~remain~~ be present during the board proceedings on his application; however, the board may meet in executive session without the applicant present for final decision on the application.

(c) Each applicant shall be viewed singly and ~~shall-be recognized~~ as an individual.

(d) Each applicant shall be allowed to discuss ~~any~~ specific problem areas with any member of the board.

HB 248

6

(e) The board shall ~~cause~~ notify the applicant ~~to be notified~~ of its decision ~~immediately~~ and shall provide the applicant with a written decision, including ~~a thorough statement of~~ the reasons for the decision, within 2 days following adjournment.

(2) Except as provided in 46-23-413, final authority in granting or revoking prisoner furloughs rests with the board. Final authority in all other matters ~~pertaining~~ relating to prisoner furloughs is in the department."

Section 8. Section 46-23-413, MCA, is amended to read:

"46-23-413. Reapplication where denied. If ~~the~~ a prisoner's application is denied by the board, the prisoner may reapply after 6 ~~months' time~~ months have passed. After an applicant has been denied three times, he may appeal to the director of the department for a hearing. An applicant who has unsuccessfully appealed to the director of the department may not reapply until 1 year has passed from the date of the appeal hearing."

Section 9. Section 46-23-415, MCA, is amended to read:

"46-23-415. Disposition of prisoner's earnings -- payment of expenses. (1) A ~~prisoner employed in the community under a work~~ prisoner's furlough plan shall ~~enter into~~ include a written financial agreement with the supervising agency ~~and the department~~ concerning the acquisition and disposition of ~~his earnings~~ funds. This

financial agreement shall provide for the payment of:

(a) ~~a~~ standard charge for ~~providing~~ food, lodging, and clothing for the prisoner, ~~if incurred and~~ if applicable;

(b) ~~the actual and~~ necessary travel and other expenses of the prisoner ~~under~~ while on furlough ~~from actual confinement under the program~~;

(c) an amount ~~to pay~~ for the support of his dependents, ~~which amount shall be paid to the dependents~~; ~~and~~

(d) court ordered restitution or other debts of the prisoner; and

~~(d)~~(e) an allowance for personal items and other expenses ~~or disbursements~~ agreed upon by the prisoner, ~~and~~ the supervising agency, and the department.

(2) Unless the financial agreement specifically provides ~~for other disbursement of the money~~ otherwise, any balance remaining after ~~deductions and~~ making such payments shall be deposited ~~to~~ in an interest-bearing account held in trust for the prisoner and shall be paid to him ~~upon release~~ when his furlough terminates.

~~(3) If no other sources of support are available, the costs of a prisoner under furlough who is in training or school shall be the responsibility of the state.~~"

Section 10. Section 46-23-421, MCA, is amended to read:

"46-23-421. Responsibility of department and supervising agency. The department shall be responsible for the activities of a prisoner ~~participating in a~~ on furlough program ~~under this~~ part. The department may delegate jurisdictional supervision of ~~work~~ prisoners on furlough ~~participants~~ to the adult parole and probation field service. The supervising agency shall be responsible for ~~those~~ activities of a ~~furloughed~~ prisoner on furlough ~~for which it is responsible~~ as provided in the written furlough agreement."

Section 11. Section 46-23-422, MCA, is amended to read:

"46-23-422. Violation of furlough agreement by prisoner. (1) If any prisoner ~~released from actual prison confinement under the~~ on furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department ~~or by~~ and the supervising agency to appear before the department ~~or~~ and the supervising agency for a conference.

(2) If a conference is not sufficient to resolve the ~~situation~~ problem and if the prisoner ~~continues~~ persists in his noncompliance, the prisoner shall be granted a due process hearing ~~on~~ with respect to the violation within a reasonable time ~~on or~~ near the site of the alleged violation to determine whether ~~a violation of~~ there is probable cause

to believe the prisoner has violated the furlough agreement ~~exists~~. The prisoner is entitled to have counsel ~~appointed to represent him~~ at the hearing at his expense. The hearing shall be conducted by a ~~hearing~~ hearings officer of the ~~board of pardons~~ department. The prisoner ~~on furlough~~ shall have all opportunities provided under 46-23-1024 and 46-23-1025 ~~pertaining~~ with respect to on-site hearings for parole revocation. If ~~reasonable grounds are~~ probable cause is established ~~for violation of the furlough agreement~~, the furlough shall be ~~cancelled~~ suspended and the prisoner shall be returned to ~~the~~ prison.

(3) At the next meeting of the board ~~of pardons after~~ following the prisoner's return ~~of the prisoner~~ to ~~the~~ prison, the prisoner shall be granted a ~~due process~~ revocation hearing ~~in order~~ to determine if the prisoner has ~~in fact~~ violated the terms of ~~the prisoner's~~ his furlough release agreement. If it is determined that the prisoner has ~~in fact~~ violated the ~~terms of the prisoner's~~ furlough agreement, ~~the prisoner~~ his furlough shall ~~remain at the prison~~ be terminated. If the ~~terms of the prisoner's release have~~ furlough agreement has not been violated, the prisoner's ~~case~~ furlough shall be ~~assigned to a parole agent and a new furlough arrangement shall be worked out~~ reinstated if the conditions of the agreement remain applicable."

HB 248

Section 12. Section 46-23-423, MCA, is amended to read:

"46-23-423. Immediate reincarceration if threat to community. If the department determines, after ~~having--been~~ being advised by the supervising agency or the adult parole and probation field service, that a prisoner on furlough presents ~~an--immediate~~ a grave threat to the community in which he is furloughed, it may order the prisoner returned to prison before a hearing is held. In this case, a hearing on the charges against the prisoner, as provided for in 46-23-422, must be held by the board no later than 30 days after the prisoner's return ~~of-the-prisoner~~ to ~~the-state~~ prison."

Section 13. Section 46-23-424, MCA, is amended to read:

"46-23-424. When prisoner dissatisfied with program. If, after ~~a-reasonable-time~~ 30 days, a ~~furloughed~~ prisoner on furlough ~~determines~~ finds that his furlough plan is unsatisfactory due to a personality conflict, a violation of his rights by his ~~supervisor~~ supervising agency, or a change of interest or employment status, the department shall grant him a hearing to determine whether ~~or--not~~ a new furlough plan should be ~~executed~~ developed."

Section 14. Section 46-23-425, MCA, is amended to read:

"46-23-425. When prisoner not benefiting from program. (1) The prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training if the prisoner:

(a) while not disabled from working by temporary illness, is unemployed for a period of 30 days or more ~~after his--availability--for--employment-is-reported-in-writing-by the-supervising--agency--to--the--department--of--labor--and industry--office--serving--the-area-in-which-the-prisoner-is furloughed-and-to-any-union-to-which-the--prisoner--belongs;~~

(b) has become so disabled as to be unemployable; or

(c) ~~is-on-an-educational-furlough-and~~ has demonstrated for a period of 6 weeks or more that he is unable to benefit from schooling, treatment, or training.

(2) At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may ~~be-at~~ attend the conference.

(3) If the problem is not resolved at the conference ~~does-not-result-in--a--resolution--of--the--problem--of--the prisoner's---unemployment,---disability,---or--inability--to~~ benefit, the department may request a hearing by the board

~~of--pardons--to--determine-an-alternate-proposal.~~ ~~In~~ At this hearing the prisoner ~~is-entitled-to-have~~ may be represented by counsel ~~appointed--to-represent-him~~ at his own expense. ~~Upon-determining~~ If the board determines that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to ~~the~~ prison."

Section 15. Section 46-23-426, MCA, is amended to read:

"46-23-426. Escape. ~~For-the-purpose-of-this-part,--the provisions---relating---to--escape~~ Escape, as defined in 46-23-401(5), is punishable as provided in 45-7-306 ~~shall apply-unless-aggravating-circumstances-require-a-more-severe penalty.~~"

Section 16. Section 45-7-306, MCA, is amended to read:

"45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, supervision of a prisoner on furlough, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on

bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, or city jail by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) escapes from a state prison, county jail, or city jail; ~~or~~

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(iii) escapes while on furlough pursuant to Title 46, chapter 23, part 4; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if

HB 248

he commits escape under circumstances other than (a) and (b) of this subsection."

Section 17. Repealer. Section 46-23-414, MCA, is repealed.

-End-

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 248	revise prisoner furlough programs	1/18	Menahan	Tuesday 23rd	pass-amend	1/29
HB 250	lengthern notice for adoption- repeal administrative rule	1/18	Stobie	Tuesday 23rd	do pass	1/24
HB 258	require printed names below signatures on instruments to be recorded	1/18	H. Robbins	Fri. 26th	pass-amended	1/26
HB 259	to elect to use hearing examiners from legal services within AG office	1/19	Tropila	Thursday 25th	pass-amended	1/25
HB 269	remove distinction for inheritance tax etc.	1/19	Yardley	Thursday 26th	Re-referred to taxation 1/25	
HB 270	statement of rule against perpetuities	1/19	Kemmis	Weds. 24th	do pass-amend	1/24

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 23, 1979

The regular meeting of the Judiciary Committee was called to order by John P. Scully, Chairman at 8:00 a.m. in room 436 of the Capitol Building on Tuesday, January 23. All members were present with the exception of Representative Day, excused and Representative Seifert, absent.

Scheduled for hearing were House Bills 226, 229, 238, 248, 250 and Senate Bill No. 63.

HOUSE BILL NO. 229: Representative Sales. This bill would specifically include district court judges in the county budget law. Except as provided this applies to expenditures made by district court judges in excess of district court appropriations authorized by the county governing body.

DEAN ZINNECKER: Montana Association of Counties. This bill will place district court judges on the same level as other county officials. I don't see why the district judge should be considered any different from anyone else in the county. This would not affect emergency procedures. He told of actual cases where the court was ordered to make added expenditures. He went on to discuss the intent of the bill.

There was no other discussion and the hearing closed on House Bill 229.

HOUSE BILL NO. 248: Representative Menahan. This bill will revise the laws relating to the prisoner furlough program. It would allow more flexibility in the amount of compensation a person must recieve requiring the person to pay for counsel to represent him at hearings, and clarifying eligibility for participation.

LARRY ZANTO: Director of Department of Institutions. There are a whole lot of changes. On page 5, section 6 the major substantive change in the bill. This bill was passed two sessions ago. I think the work for incentive program should be preserved for those who can qualify. A good deal of work has gone into it.

CAROLINE ZIMMERT: Bureau Chief, Department of Institutions. She distributed handouts. A lot of work by a lot of people went into this matrix. She went over the details of the last revocation and the list of felony evaluations on the back shows how they weighted the matrix. A score of 255 points should be reached to be paroled. We feel this is more than subjective, it is objective.

JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 26, 1979

Following the regular meeting the committee went into executive session to take action on pending bills. The meeting was called to order by Chairman Scully at 9:30 a.m. in room 436 of the Capitol Building on Friday, January 26th.

HOUSE BILL NO. 248: Representative Keedy said he had several amendments that he would propose, on page 3, line 4 and page 3, line 9 and page 4, line 9. Also on page 2, lines 3 and 4 and page 5 lines 21 and succeeding lines and line 22. Then followed discussion about the proposed amendments and about jurisdiction and how much would have to be served of a sentence. Representative Rosenthal said he wanted clarification as to what this bill would do, was he wrong that what this bill would do would affect only a few people now on the furlough system. General discussion about the furlough program, with Representatives Iverson and Daily asking for clarification. Representative Daily asked if they were making it harder to get on the furlough program. Representative Keedy said that in his opinion it would make it impossible. Representative Holmes said that the sentence review board has an average of 6 cases a year, and that in most cases they increased the sentence rather than decreased it.

It was felt that the grid should be the determining factor, and that the 2 years as stated in the bill should be cut out. Representative Keedy stated that the offender must have a designation of a non-dangerous offender before he would be considered for parole. General discussion followed about sentencing discrepancies. Representative Keedy said that with the wide range of discrepancy we have a system for real abuse of sentencing. Then followed discussion about the length of sentence.

Representative Daily moved that the bill be passed for the day. There was much disagreement to the motion and Representative Scully told them they could not speak to the motion. The motion carried to pass for the day.

HOUSE BILL NO. 238: Representative Conroy moved "do pass" and spoke to his motion. Representative Lory moved to amend page 2, line 23, following "part" strike "1" and insert "6". The motion carried with the vote unanimous.

Discussion about another amendment on page 2, line 19, and line 20, and to strike the remainder of the section. Representative Daily moved to pass for the day and the motion carried.

Representative Teague took the chair in order for Chairman Scully to present a bill in the Senate.

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 29, 1979

The committee went into executive session following the regular meeting to take action on pending bills, at 10:35 a.m. in room 436 of the Capitol Building. Chairman Scully called the meeting to order. All members were present although Representative Seifert was excused for a hearing in the Senate. He returned later.

HOUSE BILL NO. 238: Representative Keedy moved three amendments. (copy attached)

Representative Lory discussed an amendment last session and wondered if it would be exempt. After some further discussion the question was called and the motion to adopt the amendments carried with the vote unanimous.

Representative Keyser moved "do not pass as amended" and spoke to his motion. He said he is getting quite upset with the growing bureaucracy and felt that the department had all the tools they needed now and should not have any more power. Representative Conroy spoke in opposition to the motion. Representatives Roth, and Curtiss also spoke in opposition to the motion. The motion failed with Representative Keyser the only yes vote.

Representative Conroy moved "do pass as amended" and the motion carried with Representative Keyser voting "no".

HOUSE BILL NO. 248: Representative Keedy moved to amend page 5, line 21. The motion carried. (A copy of all amendments is attached)

Representative Keedy moved to amend page 6, lines 1 through 4 by striking them in their entirety. He spoke to his motion, and there was discussion on the motion. The motion to amend carried with Representatives Eudaily, Keyser and Conroy voting "no".

Representative Keedy moved to amend Page 7, lines 15 through 18 and to strike all of the new language. He spoke to his amendment and Representatives Lory and Keyser spoke in opposition. The motion failed.

Representative Keedy moved to amend Page 7, line 22. There was discussion about the amendment and Mr. Zanto from the Department explained the furlough program and how it operates now, and that it operates the

There are pages missing from the Law Library's collection. The Historical Society should have the complete set.

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary - Senate

	BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
97.	HB 258	2/1/79	3/1/79	3/1/79						3/1/79
98.	HB 259	2/1/79	3/1/79	3/14/79					3/1/79	
99.	HB 311	2/1/79	3/2/79	3/2/79				3/2/79		
100.	HB 332	2/1/79	3/2/79	3/5/79					3/3/79	
101	HB 338	2/1/79	3/2/79	3/21/79						3/21/79
102.	SB 341	2/2/79	2/9/79	2/9/79	2/9/79					
103	SB 345	2/2/79	2/9/79	2/12/79			2/12/79			
104.	SB 346	2/2/79	2/13/79	2/16/79			2/15/79			
105.	SB 348	2/2/79	2/13/79	2/19/79			2/18/79			
106.	SB 339	2/2/79	2/9/79	2/12/79	2/12/79					
107.	SB 349	2/3/79	2/10/79	Tabled 2/10/79						
108.	SB 355	2/3/79	2/12/79	2/12/79	2/12/79					
109.	SB 357	2/3/79	2/12/79	Tabled 2/15/79						
110.	HB 163	2/3/79	2/28/79	2/28/79					2/28/79	
111.	HB 248	2/3/79	3/1/79						3/16/79	
112	SB 364	2/5/79	2/10/79	2/10/79			2/10/79			

Use a separate sheet for Senate, House Bills and Resolutions

STATE LAW LIBRARY

AUG 10 1979

OF MONTANA

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 1, 1979

The forty-seventh meeting of the Senate Judiciary Committee was called to order on the above date in Room 331 of the Capitol Building by Senator Everett R. Lensink, chairman at 9:30 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 258:

This is an act to require typed or printed names below the signatures on an instrument which must be recorded and to prohibit the recording of any instrument not meeting such requirement. Representative Robbins gave a brief explanation of this bill and introduced John Bell, who represents the Montana Association of County Clerks and Recorders.

Mr. Bell stated that all too often signatures are totally illegible and this causes vast problems. He showed the committee an example of handwriting that could not be read.

There were no further proponents and no opponents, and Senator Lensink stated that he felt the wording should be fixed up. There being no further questions or comments, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 242:

This is an act creating informal contested case proceedings; providing for joint waiving of formal proceedings; providing for joint waiving of administrative proceedings; restricting modification by the agency of the proposal for decision, etc. Representive Harper, District 30, Helena, stated that this was an administrative code committee bill and he gave an explanation of this bill.

Bob Pyfer, staff attorney for the Legislative Council, gave a further explanation of this bill.

There were no further proponents and no opponents.

Senator Brown questioned if section 4 was originally part of the bill, and Representative Harper said that it was. Senator Brown said that this has nothing to do with informal proceedings, and he was wondering if the title encompasses that. He stated that you are entitling them to attorney's fees which it does not do now. Representative Harper stated that this is included in

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 248:

This is an act to generally revise the laws relating to the prisoner furlough program, etc. Representative Menahan gave an explanation of this bill, which he stated was requested by the Department of Institutions.

A statement was given in support of this bill by Bob Rhay, Administrator of the Corrections Division of the Dept. of Institutions.

There were no further proponents.

Karen Mikota, representing the League of Women Voters, stated that they support a strong furlough program, and they feel that the present law that established this program is good. She said that on page 5, lines 8 through 20 are ambiguous; and on page 12, line 7 the word "executed" infers that action should be taken and she said that the word "developed" means there is no follow-through. She further questioned on page 13, lines 11 through 12 and they felt that this was a drastic alternative; and on page 6, lines 2 through 6, that this cuts into the heart of the work furlough program and they felt that this is a closely supervised and an effective means of rehabilitation. She further stated that they know the program works, and questioned why it should not be strengthened or left alone, and they would urge a do-not-pass on this piece of legislation.

Senator Ryan stated that he was against the concept of work furlough itself and he felt that this was a circumvention of parole. He stated that when a person is in prison, and they hand them a list of rules, they will sign them to get out the door. He said that they could give the inmates early parole rather than go through work furloughs, there is no risk involved; it just adds another bureau in the department of institutions; and he thinks the committee should consider taking agency out of it and putting in people.

Representative Menahan said that this is probably true that this is a selective group - he stated that you have to be selective. He felt that what should be developed is a furlough system and abolish the parole system, as he felt that a great many of them fail. He said that there is a gentleman who is now at vo-tech, who had been on parole, and now he says that this is the greatest program there is, and he felt that this is the type of program that is needed.

Senator Towe said that he would like to hear from Carolyn Zimmelt, Chief of Community Services Bureau, from the Dept. of Institutions and would like to know how close a supervision do the sponsors have. He was told that they have daily contact with a teacher, at the end of the first thirty days, he is looked at again to see if he needs that much supervision, and perhaps he may be changed to once every other day.

Senator Towe asked Senator Ryan how often did he see parolees. Senator Ryan stated sometimes on a daily basis and sometimes, like in the summer, every three months.

It was noted that 41.6 per cent of the furloughees have failed and have returned to prison.

Senator Turnage said that he was concerned about what constitutes escape and asked if you are going to give this fellow ten years because he didn't make his curfew. There was some discussion on what constitutes escape.

Senator Towe questioned about the effects of this bill on the prison population, and he wondered if this bill would have an adverse affect and would it make it more difficult for furlough programs.

Mr. Rhay stated that the prison population is of great concern to us; it is hard to project, it is going up at such a rate; and something has to be done. He stated that he did not feel that this would reduce the number of furlough programs except in the fringe areas and these are people they don't want out anyway.

Senator Towe questioned why on page 3, lines 17, 18, and 19 these were taken out. Day Hoy, parole coordinator, stated that these are just guidelines and people that are self-employed, logging, seasonal jobs, working on farms and ranches, that there is no way you can get a handle on this guideline and, therefore, we said to strike it.

Senator Turnage questioned in section 6, what is the real affect of this on eligibility for furlough. Mr. Rhay stated that this restricts the people who can apply.

Senator Van Valkenburg asked how many people apply for the furlough program and it was noted that about 50 per cent of the total number applying for parole, and the board denied about five or six.

Senator Towe stated that on page 9, concerning the violation of furlough agreement it says that if he fails to comply, he shall be called by the department and the supervising agency to appear before the department for a conference. He asked if that is right.

Mr. Rhay stated that, yes, this is true, it will be handled at the next hearing after he is back in prison. Senator Towe questioned why would you take this out - isn't there a constitutional problem with that. Ms. Semeck stated that that was done in the judiciary committee in the House and she stated that it appears to her that it should be reinserted and she wondered if we are giving them due process.

Senator Anderson questioned as to how many chiefs do they have to how many Indians and Mr. Hoy stated that they are supervised by volunteers in the community, friends, relatives, halfway houses, and he said that we do have an overlap.

Senator Towe questioned if they have any idea as to how much it costs on a furlough program compared to the cost in prison. Mr. Hoy said that it costs $35.00 in the institution per man and $28.00 for a female a day. He stated that they do not have furlough costs per day, but total cost of incarceration and subtracting cost of administration would have a saving of approximately $117,000.00.

CONSIDERATION OF HOUSE BILL 229:

This is an act to specifically include district court judges in the county budget law, etc. Representative Sales gave an explanation of this bill which he stated should remove the doubt of whether district judges have to live within their budge

Mike Stevens, representing the Montana Association of Citie and Counties, gave a statement in support of this bill.

There were no further proponents and no opponents.

Senator Brown gave some background information on this bill and stated that he sponsored SB 397, which he hoped is the one that is going to go.

Representative Sales stated that he did not see too much conflict between the two bills.

Senator Turnage stated that we now have invited the courts to embark on any program they want to, and HB 229 doesn't even hope to answer that problem. He said that the district courts could decide to create a whole new program not authorized by

Date 3/1/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

Please sign & return to Secretary Yesterday

SENATE Judiciary COMMITTEE

BILL _____ VISITORS' REGISTER DATE 3/1/12

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OP
Pat Stewart	MT Pet Council	HB 2	✓	
Mike Stack	MT Assoc of Counties	HB 2	✓	
Bill Knapp	Dept of Corrections	HB 248	✓	
D. Hoyt	"	HB 248	✓	
C. Zimmet	Dept Corrections	HB 248	✓	
Karin Mireau	League of Women Voters	HB 248		✓
Edward G. Hayes	Sup. of St. Pol.	HB 248		
Mary K. Fitch	Youth Advocate			
Jon Sesso	MT State Sheriffs	HB 25	✓	
Don Allen	Mt Pet Assoc	HB 25	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

League of Women Voters of Montana
HB 248

The League supports a strong furlough program. After much study, we have concluded that a furlough program aids in resocialization and rehabilitation. We feel the present law establishes a strong and workable program. Furlough has a high success rate. The state has experienced a direct savings of approximately $150,000. If fully implemented the program could service more people and generate more savings to the state.

The League opposes HB248 for several reasons. The language has been changed leaving ambiguous meanings. Examples are found on page 5, lines 8-20. Originally the rules would include provisions for (1) working at paid employment. The new wording strikes that and adds guidelines for (3) financial arrangements with respect to paid employment and/or residence housing. This is not a mere clarification or usage of more specific words. The rules did provide for or supply the furloughee with the opportunity to work or be involved in some training. To simply write guidelines can mean listing a set of rules. Who finds the work or training? If there is no help in that essential element of setting up a furlough then why consider the rules?

Page 12, Line 7. The word executed definitely requires that action be taken once the plan is formed. Developed requires no follow-through.

Page 13, Lines 11-13. Previously the prisoner is entitled to have counsel appointed to represent him. Now he may be represented by counsel at his own expense. This is quite an

24 # 4

obvious and drastic alteration.

We also oppose the new time limitations for application.

Page 6, Lines 2-6. This provision cuts into the heart of the furlough program. Some applicants may take months to process. The Board of Pardons' action is not given specific timelines. The prisonoer needs sufficient time to apply and be processed and still experience the program. The new time limitations alone could effectively eliminate furlough.

Furlough is a closely supervised successful rehabiliation. If our goal is to ensure that the offender does not return to a life of crime as well as remaining cost effective why insert these killing stipulations? This program has been working.

Finally, take note of the repealer. This section includes "(1) If the application is approved, the department shall within the shortest possible time, locate an agency capable of supervision of the applicant." This gives specific responsibility to the department. With HB248 who will actually get things going? The prisoner by virtue of his situation will not always be able to locate a supervising agency. I can not say this often enough. We know the program works. Why not strengthen it or at least leave it alone. HB248 in its present form will gradually phase furlough out in this state. This is avoidable and we strongly urge a DO NOT PASS.

2C /HB47

March 1, 1979
Helena, Mont.

To: Senator Tom Towe
Senate Judiciary Committee
Rm. 331 Capitol Building

Re: HB - 248 Prisoner Furlough Program

Dear Senator Towe,

Am enclosing some statistics which may be useful in arriving at a determination of HB - 248. Yourself and other committee members had asked for specific facts and figures to which I could only make an educated guess. To the best of my recollection the following issues were discussed:

150 = total number of prisoners applying for furlough in 1978
21 = number of prisoners completing furlough process in 1978
17 = number of prisoners approved for furlough in 1978
4 = number of prisoners denied for furlough in 1978

41 = total number of prisoners released on furlough since inception of program (Sept.'75)
6 = number of prisoners returned from furlough to custody (15%)

Cost per man day @ state prison		= $35.62
Cost per day (Women's Life Skills Center)		= $28.00
Cost per day furlough	(1978)	= 8.28
	(1977)	= 5.97
	(1976)	= 14.57

Respectfully,

Daniel R. Hoy, Furlough Coordinator
Department of Institutions

(#47)

OPINION TO MAINTAIN FURLOUGH PROGRAM

1). Monetary savings to state vs. continued incarceration

2) Protection of public primary consideration:
   a. 4-step screening process in determination of furloughs
   b. low recidivism rate on furlough (12 - 15%)
   c. criminal justice and prosecuting agencies offer input to Board of Pardons
   d. B.O.P. retains final authority to release

3) Provides further rehabilitative tools for use by Board of Pardons -- furlough may be granted in leu of parole release

4) Motivates inmates to change -- by offering alternative to incarceration (applicants must secure own sponsors, etc.)

5) Provides some relief to overcrowding of prison population

6) Utilizes existing probation / parole system

7) Utilizes volunteers and community resources

8) Promotes support of dependents and payment of restitution or debts

9) Minimal state assistance to furloughed inmates while on educational programs
   -- Rehab. Service Div. (80% fed. - 20% state)
   -- V.A. benefits (fed.)
   -- B.E.O. Grants & student loans (fed.)
   -- Bureau of Indian Affairs (fed.)

10) During the past three years, furlough release has proven to be an effective program. The general public also derives some "spin - off" benefits such as taxes paid by employed prisoners; medical expenses assumed by furloughees and the support of dependents.

FURLOUGH STATISTICS

Average length of furlough
- 1976 - 171.3 days
- 1977 - 177.2
- 1978 - 198.6

Number of Furlough Days
- 1976 - 974 male
- 1977 - 1952 male / 200 female
- 1978 - 4132 male / 245 female

Time to Parole Eligibility
- 1976 - 179.8 days
- 1977 - 210.7 days
- 1978 - 353.9 days

Cost Effectiveness
- 1976 - $ 12,589.53
- 1977 - $ 47,865.73
- 1978 - $117,764.23

Cost per Furlough day
- 1976 - $ 14.07
- 1977 - $ 5.97
- 1978 - $ 8.28

Type of Furlough Programs
- 1976 - 7 school
  2 work
  1 treatment
- 1977 - 4 school (1 female)
  8 work (3 female)
  1 treatment (female)
- 1978 - 9 school
  7 work
  2 treatment

1976 FURLOUGH STATISTICS

Number of furlough days	974
Average length of furlough	171.3 days
Average time to parole eligibility	179.8 days

Type of Furlough Program
7 school
2 work
1 treatment

Cost of incarceration @ $27.50 per man day (974 x $27.50)	= $26,785.00
LESS (administrative costs)	
1/3 salary & benefits (Zimmet)	= 9000.00
travel	= 500.00
20% Rehab. Services Div. ($952)	= 190.40
25% Work-Study ($875)	= 218.75
Lighthouse Drug Treatment Program @ $32.72/day x 131 days	= 4286.32
total state funding	= $14,195.47

FEDERAL FUNDS		COST EFFECTIVENESS
Mtn.-Plains Program		$26,785.00
(H.E.W.)	= 340	-14,195.47
Vetran's Admin.	= $1350	$12,589.53

EARNED INCOME = $9220

LESS		
family & child support	= 1600*	
board & room	= 400	*indirect benefits
misc. bills & debts	= 2550	
20% taxes	= 1844*	$3444.00

$14.57 / furlough day

974 furlough days ⟌ $14,195.47 (total state funding)

1977 FURLOUGH STATISTICS

Number of furlough days (1952 male/ 200 female)
Average length of furlough 177.2 days
Average time to parole eligibility 210.7 days

Type of Furlough Program
4 school (1 female)
8 work (3 female)
1 treatment (female)

Cost of Incarceration

1952 male @ $28.24 / day	= $55,124.48
200 female @ 28.00 / day	= 5,600.00
	$60,724.48

LESS (administrative costs)

1/3 salary & benefits (Zimmet)	= 9,000.00
travel expenses	= 500.00
20% Rehab. Services Div. ($2746.25)	= 549.25
25% Work-Study ($3062.00)	= 765.50
Life Skills Training Center @ $28.00/day x 73 days	= 2044.00
total state funding	= $12,858.75

FEDERAL FUNDS
student loans & B.E.O.G. =$1140
J.S. & V.A. benefits =$4188

COST EFFECTIVENESS

	$60,724.48
	-12,858.75
	$47,865.73

EARNED INCOME = $35,447.00

LESS

family & child support	11,300.00*	
board & room	4,975.00	
savings	910.00	*indirect
misc. bills & debts	1,110.98	benefits
20% taxes	7,089.40*	$18,389.00

2152 Furlough days) $12,858.75 (total state funding) — $5.97 / furlough day

CATEGORIES OF CRIME

Homicide	10
Aggrivated Assault	3
Agg. Assault & Rape	1
Arson & Forgery & Theft	1
Sale of Drugs	3
Sale & Possession of Drugs	3
Armed Robbery	2
Robbery & Rape	1
Robbery & Burg.	1
Burglary	3
Burglary & Theft	2
Burglary & Parole Violation	1
Concealed Weapon & P.V.	1
Forgery	6
Forgery & P.V.	1
Grand Larceny & Obt. Money False Pretense	1
Grand Larceny & Escape	1

6.)

HB 248: (Menahan)

This bill generally revises the law relating to the prisoner furlough program.

Section 1. Definitions. Changes "Unless the context requires otherwise" to "unless otherwise specified" so that the definitions apply unless there is a specific, express exception--the definitions of applicant (amended), application (new), and "plan" (new) clarify the application procedure.----deletes the definition of "jail" because it is never used; --the definition of "prison"(new) changes current law by adding adult correctional facilities which are under contract with the department of institutions.
---the definition of "record" was added by the House (see sections 12 and 14).

*Section 2. Purpose. Deletes the requirement that furloughees be paid minimum wage (similar change in section 5 (1)).

Section 3. Amendments clarify that only state officers may be guilty of official misconduct; new sentence clarifies that the crime of mistreating prisoners applies to mistreatment of furloughees by state officers.

Section 4. New sentence clarifies that good time continues to accrue while the prisoner is on furlough.

Section 5. Amendments clarify rule making authority.

Section 6. Changes requirements for eligibility to participat
* in the program; changes current law by making prisoners whose parole has been revoked eligible if other requirements are met.

Section 7. Allows board more flexibility in considering applications by deleting the requirement that the decision be made at the board's next meeting; requires the board itself to notify an applicant of its decision and deletes the requirement that notice be given immediately;
In subsection (2) a new sentence has been added to clarify what entity has the final authority in granting or revoking furloughs.

*Section 8. Provides a new appeal procedure to the department when the board rejects a prisoner's application three times.

Section 9. Amendments clarify the contents of the financial agreement between the prisoner and the supervisory agency (entered into before the application is submitted), allow
* provisions regarding restitution, and provide that the prisoner receives the balance when his furlough terminates rather than on his release as is provided in current law.

Section 10. Amendments reward and clarify terminology.

Section 11. Changes procedure for a conference when the prisoner is alleged to have violated his furlough agreement.
* The House deleted the post-conference hearing and changed current law by requiring the retirn of the prisoner to prison if the conference does not resolve the problem. As under current law, a hearing must be held after his return to prison. New sentence at end of section clarifies the prisone

HB 248, continued

must pay for his counsel if he has any.

Section 12. Amendment relaxed requirement that must be met before a prisoner can be returned to prison with a hearing or conference ("grave threat" vs "immediate grave threat").

** The House added "the record of" which has no meaning in this context. No hearing has been held. Therefore, no record exists.

Section 13. Amendments put 30-day time limit on a request by a prisoner for changes in his furlough plan.

Section 14. Deletes the requirement that the availability of a furloughed prisoner for employment be reported to the department of labor and industry and any union bebelongs to. In subsection (3), adds a requirement that a record be made of a hearing held because the prisoner is not benefiting from the program and clarifies that the prisoner must pay for his counsel if he has any.

**Sections 15 and 16. Makes it a felony to leave supervision without permission while on furlough.

*Section 17. Repeals the section which requires the department to locate a supervising agency after approving the application. This bill amends current law so that the prisoner must find the supervising agency and enter into an agreement with it before he applies to participate in the furlough program.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 1, 1979

The forty-eighth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol Building on the above date at 4:28 p.m.

ROLL CALL:

All members were present with the exception of Senators Healy and Anderson, who were excused.

DISPOSITION OF HOUSE BILL 203:

Senator Turnage moved that this bill be concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 223:

Joan Mayer from the Legislative Council offered some amendments for this bill, and she stated that she thought these amendments would make this bill worse.

Senator O'Hara stated that he thought there was some need for this. He said that an operator called in and tied up the line for one-half hour and he claimed that he was holding someone hostage. Senator Towe stated that the reporter did not realize the fellow was there; and the man, who was holding the hostage, picked up the phone. Senator O'Hara said that that was not the way he heard it.

Senator Towe stated that this would allow them to cut the line or pull the plug. Senator Van Valkenburg said that this allows the law enforcement people to listen in on any phone conversation.

Senator Towe moved that the bill be amended on page 3, line 11, by striking "(3)" and inserting "Section 2. There is a new section which reads as follows: Code and further amend page 4, following line 4, by inserting the following new language: Section 3. Note to codifier: Section 2 should be codified in part 1, chapter 6 of title 69, and further amend on page 1, line 12, strike subsection 3 and insert (Section 2). The motion carried unanimously.

Senator Turnage moved that the small amendment which was proposed by Ma Bell be adopted. The motion carried unanimously.

Senator Brown moved that the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 248:

Senator Towe moved that this bill be not concurred in. He stated that the Department of Institutions introduced this bill; we think it should be amended so that we don't abuse discretion; Chairman of the Board of Paroles, Hank Burgess, wanted more control in parole; you can't get furlough until two years within parole eligibility; and 41 people have been furloughed and only six failures; that parole has a failure rate of fifty per cent; and he felt that some other things are bad - if you take out the hearing, they can put any rules in they want.

Senator O'Hara stated that Senator Ryan talked to him quite length, and he said that he is not sold on the program whatsoever. He said that the administrator, Carolyn Zimmet, was to come up to Great Falls for some meeting and she couldn't get a babysitter; and he just didn't feel the program would work.

Senator Brown said that he agreed that the bill should die except for one thing - considering parole, they have to provide for their own counsel; the law right now requires the state provide counsel; and it does amend it so that the prisoner is responsible.

Senator Towe said that at the prevailing rate of pay, we should require a minimum wage.

Joan Mayer suggested that maybe there should be a substitute bill. No action was taken on this bill.

DISPOSITION OF HOUSE BILL 259:

Senator Brown stated his problem with this bill is just with that last section and the way it is worded, and he felt that they are going to get in a hassel.

Joan Mayer, staff attorney for the Legislative Council, stated that Bob Pyfer said that apparently federal law prohibits the superintendent to act in some of these situations. Senator Brown said that she would just have to disqualify herself.

Senator Turnage moved that the bill be amended by striking all the language on page 3. The motion carried unanimously.

Evening

Date 3/4/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)			✓
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)			✓

Each Day Attach to Minutes.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 6, 1979

The fifty-second meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in room 331 of the capitol building on the above date at 9:34 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 580:

This is an act to provide that it is not a defense to the crime of issuing a bad check that consideration was not received at the same time a check or other order is issued or delivered. Representative Fagg felt strongly that there should be some tightening of the law so that these checks can be collected.

Mary Jo Lovely, representing the Montana Landlords Association, stated that they encourage the use of checks, but when these checks cannot be collected, she stated it is very hard on the owner, particularly the elderly person with one renter or one person just getting started, that a bad check can really be bad for them.

Representative Scully stated that this bill is directed at landlords who are collecting rent, but he stated that is not the only case. He said that it is important to know that the check law that they now have says you must receive goods at the time you write the check. He told of an example wherein an individual from Idaho wrote a check for $36,000.00 for twine and other farm goods on a wholesale basis for a retail store and the judge decided that at the time of the writing of the check, the goods had not been delivered and that this was not a bad check.

There were no further proponents.

Tom Honzel, representing the Montana Association of County Attorneys, stated that he did not think that this bill was needed. He stated that he thought the problem of rent checks is adequately covered under the landlord-tenant act and the retainer act. He believed that the principle thing is consideration and if there is a failure of consideration, he did not think the county attorneys should have to prosecute.

DISPOSITION OF HOUSE BILL 602:

Senator Turnage moved that this bill be not concurred in. Senator Lensink stated that in criminal law, they have to prove beyond a reasonable doubt and in civil law has to prove preponderance of evidence. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 539:

Senator Anderson moved that this bill be not concurred in. The motion carried with Senator Healy voting no.

DISPOSITION OF HOUSE BILL 248:

Senator Towe stated that the department said there is confusion about eligibility at least until they have served one-half of the sentence

Joan Mayer from the Legislative Council went over the proposed amendments and she stated that this is really a substitute bill. Senator Turnage moved the adoption of the amendments. The motion carrried unanimously. Senator Turnage stated that a statement of intent should probably be made.

Senator Towe stated that the bill will (1) state that they don't have to pay minimum wage; (2) in order to be eligible for furlough, have to comply with the rule of the department, also makes it clear he isn't eligible until he has served one-half of his sentence; (3) if picked up for furlough violation, he has a right to counsel but only at his own expense.

Senator Turnage moved that the bill be concurred in, as amended. The motion carried unanimously.

It was agreed that a statement of intent should be included on this bill and the committee will consider it again when a statement of intent is prepared.

Date 3/6/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

STATEMENT OF INTENT RE: HB 248

A statement of intent is required for this bill in that it delegates authority to adopt rules in section 2.

Section 2 (section 46-23-405, MCA) directs the Department of Institutions to adopt rules which include guidelines concerning prisoner eligibility to participate in the prisoner furlough program. Such guidelines are intended to provide objective criteria for evaluating each individual's chance for success such as the type of crime for which he is incarcerated, prior felonies, revocations of parole, escapes, and time to parole eligibility. Each prisoner is to be given points under each criterion, and each criterion is to be weighted in accordance with its relative importance.

First adopted by the SENATE COMMITTEE ON JUDICIARY on March 8, 1979.

HB 248

1. Title, line 5.
Strike: "GENERALLY"

2. Title, line 6.
Following: "PROGRAM"
Insert: "BY ALLOWING MORE FLEXIBILITY I
THE AMOUNT OF COMPENSATION A FURLOUGHE
MUST RECEIVE, REQUIRING A FURLOUGHEE
TO PAY FOR COUNSEL TO REPRESENT
HIM AT HEARINGS, AND CLARIFYING
ELIGIBILITY TO PARTICIPATE"

3. Title, line 7.
Following: "SECTIONS"
Strike: "45-7-306, 46-23-401 THRO
Insert: "46-23-402,"

4. Title, line 8.
Following: line 7
Strike: "THROUGH 46-23-413"
Insert: "46-23-422"
Following: "AND"
Strike: "46-23-415 THROUGH 46-23-426"
Insert: "46-23-425"

H\(#52)

5. Title, lines 8 and 9.
Following: "MCA" on line 8
Strike: remainder of line 8 through "MCA" on line

6. Pages 1 through 15.
Strike: all of the bill following the enacting clause
Insert: "Section 1. Section 46-23-402, MCA, is amended to read:

"16-23-402. Purpose of prisoner furlough program. (1) The purpose and intent of this part is to:

(a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;

(b) increase their responsibility to society;

~~(c) provide for the minimum hourly wage required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer to be paid to said convicts while so employed;~~

~~(d)~~(c) make it possible that they may work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.

(2) The prisoner program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.

(3) This part is to be liberally construed to effect the overall objectives set forth in this section."

Section 2. Section 46-23-405, MCA, is amended to read:

"16-23-405. Establishing program -- rules. The department is authorized and directed to establish a furlough program and make rules in accordance with Title 2, chapter 4, to implement and control the same. Rules shall include ~~provisions~~ guidelines for:

(1) ~~working at paid employment for a rate of pay not less than the minimum hourly wage as required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer~~ prisoner eligibility;

(2) participating in an educational, treatment, or training program;

(3) approval of supervising agency; and

(4) review of determinations in furlough application."

Section 3. Section 46-23-411, MCA, is amended to read:

-- eligibility

"46-23-411. Application to participate. Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the furlough program ~~at any time during the term~~ if he has served at least one half of the time required to be considered for parole and qualifies under the rules established by the department."

Section 4. Section 46-23-422, MCA, is amended to read:

"46-23-422. Violation of furlough agreement by prisoner. (1) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency.

(2) If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner ~~is entitled to~~ may be represented by counsel ~~appointed to represent him~~ at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison.

(3) At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."

Section 5. Section 46-23-425, MCA, is amended to read:

"46-23-425. When prisoner not benefiting from program. (1) The prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training if the prisoner:

(a) while not disabled from working by temporary illness, is unemployed for a period of 30 days or more after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to any union to which the prisoner belongs;

(b) has become so disabled as to be unemployable; or

(c) is on an educational furlough and has demonstrated for a period of 6 weeks or more that he is unable to benefit from schooling, treatment, or training.

(2) At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference.

(3) If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may request a hearing by the board of pardons to determine an alternate proposal. In this hearing the prisoner ~~is entitled to have~~ may be represented by counsel ~~appointed for him~~ at his own expense.

Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to the prison."

STANDING COMMITTEE REPORT

March 9, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 243

Respectfully report as follows: That House Bill No. 243,
third reading bill, be amended as follows:

1. Title, line 5.
Strike: "GENERALLY"

2. Title, line 6.
Following: "PROGRAM"
Insert: "BY ALLOWING MORE FLEXIBILITY IN THE AMOUNT OF COMPENSATION A FURLOUGHEE MUST RECEIVE, REQUIRING A FURLOUGHEE TO PAY FOR COUNSEL TO REPRESENT HIM AT HEARINGS, AND CLARIFYING ELIGIBILITY TO PARTICIPATE"

3. Title, line 7.
Following: "SECTIONS"
Strike: "45-7-306, 46-23-401 THROUGH"
Insert: "46-23-402,"

4. Title, line 8.
Following: line 7
Strike: "THROUGH 46-23-413"
Insert: "46-23-422"
Following: "AND"
Strike: "46-23-415 THROUGH 46-23-426"
Insert: "46-23-425"

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

45

5. Title, lines 8 and 9.
Following: "MCA" on line 8
Strike: remainder of line 8 through "MCA" on line 9

6. Pages 1 through 15.
Strike: all of the bill following the enacting clause
Insert: "Section 1. Section 46-23-402, MCA, is amended to read:

"46-23-402. Purpose of prisoner furlough program. (1) The purpose and intent of this part is to:
(a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;
(b) increase their responsibility to society;
~~(c) provide for the minimum hourly wage required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer to be paid for said convicts while so employed;~~
~~(d)~~ (c) make it possible that they may work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.
(2) The prisoner program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.
(3) This part is to be liberally construed to effect the overall objectives set forth in this section."

Section 2. Section 46-23-405, MCA, is amended to read:

"46-23-405. Establishing program -- rules. The department is authorized and directed to establish a furlough program and make rules in accordance with Title 2, chapter 4, to implement and control the same. Rules shall include ~~provisions~~ guidelines for:
~~(1) working at paid employment for a rate of pay not less than the minimum hourly wage as required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer~~ prisoner eligibility;
(2) participating in an educational, treatment, or training program;
(3) approval of supervising agency; and
(4) review of determinations in furlough application."

Section 3. Section 46-23-411, MCA, is amended to read:

"46-23-411. Application to participate -- eligibility. Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the furlough program ~~at least by the time the inmate~~ if he has served at least one-half of the time required to be considered for parole and qualifies under the rules established by the department."

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

4e

Section 4. Section 46-23-422, MCA, is amended to read:

"46-23-422. Violation of furlough agreement by prisoner. (1) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency.
(2) If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner ~~is entitled to have~~ may be represented by counsel ~~appointed to represent him~~ at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison.
(3) At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."

Section 5. Section 46-23-425, MCA, is amended to read:

"46-23-425. When prisoner not benefiting from program. (1) The prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training if the prisoner:
(a) while not disabled from working by temporary illness, is unemployed for a period of 30 days or more after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to any union to which the prisoner belongs
(b) has become so disabled as to be unemployable; or
(c) is on an educational furlough and has demonstrated for a period of 6 weeks or more that he is unable to benefit from schooling, treatment, or training.
(2) At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference.
(3) If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may request a hearing by the board of pardons to

.....
Chairman.

STATE PUB. CO.
Helena, Mont.

determine an alternate proposal. In this hearing the prisoner is ~~entitled to have~~ may be represented by counsel ~~appointed to represent~~ him at his own expense. Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to the prison.""

And, as so amended,
BE CONCURRED IN

EVERETT R. LENSINK, Chairman.

STATE PUB. CO.
Helena, Mont.

48

BILLS (Dover, Chairman):
Correctly enrolled - SB 429. Report adopted.

I have examined Senate Bill No. 429 introduced by me and find the same to be correct. (Fasbender)

The Senate will please take note that the President will at the hour of adjournment, April 12, 1979, sign the following bills:
SB 429, HB 122, HB 237, HB 482, HB 634, HB 727, HJR 19.

William L. Mathers
President

REPORTS OF SELECT COMMITTEES

NEW FREE CONFERENCE COMMITTEE ON SENATE BILL NO. 106

(Report No. 2, April 11, 1979)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your New Free Conference Committee on Senate Bill No. 106, met on April 11, 1979, and considered:

House Judiciary Committee Amendments dated March 16, 1979, third reading copy, and recommend as follows:

That the House recede from Standing Committee amendment no. 1 and the Senate accede to the Standing Committee amendment no. 2;

That Senate Bill No. 106 be further amended as specified in the CLERICAL INSTRUCTIONS;

That the reference copy of Senate Bill No. 106 read as specified in the CLERICAL INSTRUCTIONS;

And, that the New Free Conference Committee Report on Senate Bill No. 106 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 1, line 15.
Following: line 14
Strike: "$22,500"
Insert: "$20,000"

FOR THE SENATE:

B. Brown, Chairman
McCallum
S. Brown

FOR THE HOUSE:

Keedy, Chairman
Uhde
Eudaily

Report adopted.

JOINT CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL NO. 248

(Report No. 1, April 3, 1979)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on Senate Amendments to House Bill No. 248, met April 2, 1979, and considered:

Senate Committee on Judiciary Amendments to the third reading copy, dated March 10, 1979, and recommend as follows:

That the House accede to the Committee amendment nos. 1 through 6;

And, that the Joint Conference Committee Report to House Bill No. 248 be adopted.

FOR THE SENATE:

Lensink, Chairman
Anderson

FOR THE HOUSE:

Holmes, Chairman
Bertelsen

Report adopted.

JOINT CONFERENCE COMMITTEE ON
SENATE AMENDMENTS TO HOUSE BILL NO. 365

(Report No. 1, April 11, 1979)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on Senate Amendments to House Bill No. 365, met April 11, 1979, and considered:

Senate Committee on Local Government Amendments to the third reading copy, dated March 22, 1979, and recommend as follows:

That the Senate recede from Committee amendment nos. 1 through 4;

That the reference (engrossed) copy of House Bill No. 365 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Joint Conference Committee Report to House Bill No. 365 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 1, line 14.
Following: "~~MORE THAN~~"
Insert: "more than"

2. Page 1, line 15.
Strike: "OR MORE"

3. Page 1, line 24.
Following: "~~MORE THAN~~"
Insert: "more than"

4. Page 1, line 25.
Strike: "OR MORE"

FOR THE SENATE:

Lockrem, Chairman
Watt
Rasmussen

FOR THE HOUSE:

Kessler, Chairman
Azzara
Moore

MESSAGES FROM THE GOVERNOR

April 12, 1979

The Honorable William Mathers
President, Montana State Senate
State Capitol
Helena, Montana 59601

Dear Mr. President:

This is to inform you that I have signed the following measures this date:

HB 920, do not pass.

On motion by Huennekens, the Adverse Committee Report on SB 416 was adopted by the following vote: (81-7)

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dussault, Ellis, Ellison, Ernst, Fabrega, Feda, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hemstad, Hirsch, Huennekens, Hurwitz, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nordtvedt, O'Connell, Pavlovich, Pistoria, Porter, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Seifert, Shelden, Sivertsen, Smith, Spilker, Staigmiller, Thoft, Tropila, Underdal, Vincent, Vinger, Wood, Wyrick, Yardley, Mr. Speaker.
Total 81

Noes: Burnett, Hayne, Holmes, Nathe, Stobie, Teague, Waldron.
Total 7

Excused: Ellerd.
Total 1

Absent or not voting: Brand, Dozier, Eudaily, Fagg, Iverson, Magone, Oberg, Quilici, South, Uhde, Williams.
Total 11

COMMUNICATIONS AND PETITIONS

The Speaker explained to the House members the schedule for the Easter weekend.

REPORTS OF SELECT COMMITTEES

JOINT CONFERENCE COMMITTEE
ON HOUSE BILL NO. 248
Report No. 1, April 3, 1979

Mr. President and Speaker of the House:

We, your Joint Conference Committee on House Bill No. 248, met April 2, 1979, and considered:

1. Senate Committee on Judiciary amendments to the third reading copy, dated March 10, 1979.

We recommend that:

1. the House accede to the Committee amendment numbers 1 through 6;

2. the Conference Committee Report to House Bill No. 248 be adopted.

FOR THE HOUSE:	FOR THE SENATE:
HOLMES	LENSINK
BERTELSEN	RYAN
MENAHAN	ANDERSON

FREE JOINT CONFERENCE COMMITTEE
ON HOUSE BILL NO. 759
Report No. 1, April 11, 1979

Mr. President and Speaker of the House:

Absent or not voting: Azzara, Johnston, Menahan, Scully, Shelden.
Total 5

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Dussault moved that the House resolve itself into a Committee of the Whole, for the consideration of business on Second Reading. Motion carried.

Vincent in the Chair. Committee arose.

House resumed. Mr. Speaker in the Chair.

Mr. Speaker: We, your Committee of the Whole, having had under consideration business on Second Reading, recommend as follows:

That HJR 68 do pass. (81-0)

That SA to HB 282 be concurred in. (69-8)

That SA to HB 297 be not concurred in. (79-2)

That SA to HB 299 be concurred in. (79-0)

That SA to HB 418 be concurred in. (73-4)

That SA to HB 427 be concurred in. (73-4)

That SA to HB 534 be concurred in. (77-1)

Moore moved that SA to HB 643 be placed below HJR 59. Motion carried.

That SA to HB 669 be concurred in. (72-0)

That SA to HB 796 be concurred in. (72-1)

That SA to HB 830 be concurred in. (73-6)

That SA to HB 845 be concurred in. (83-1)

That SA to HB 910 be concurred in. (84-1)

That SA to HB 916 be not concurred in. (82-5)

Dussault moved that SA to HJR 42 pass consideration for the day. Motion carried.

That SA to HJR 51 be not concurred in. (80-3)

That SA to HJR 59 be concurred in. (85-0)

That SA to HB 643 be concurred in. (84-3)

That Free CC on HB 248 be adopted. (78-3)

That CC on SA to HB 365 be adopted. (78-5)

That Free CC on HB 759 be adopted. (81-3)

That Free CC on HB 768 be adopted. (81-0)

Rosenthal moved that Free CC on SB 106 pass consideration for the day. Motion carried.

That Free CC on SB 170 be rejected. (71-13)

That GA to HB 436 be adopted. (81-4)

STATEMENT OF INTENT RE: HB 248

A statement of intent is required for this bill in that it delegates authority to adopt rules in section 2.

Section 2 (section 46-23-405, MCA) directs the Department of Institutions to adopt rules which include guidelines concerning prisoner eligibility to participate in the prisoner furlough program. Such guidelines are intended to provide objective criteria for evaluating each individual's chance for success such as the type of crime for which he is incarcerated, prior felonies, revocations of parole, escapes, and time to parole eligibility. Each prisoner is to be given points under each criterion, and each criterion is to be weighted in accordance with its relative importance.

First adopted by the SENATE COMMITTEE ON JUDICIARY on March 8, 1979.

HB 248

53

HOUSE BILL NO. 248

INTRODUCED BY MENAHAN

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ~~GENERALLY~~ REVISE THE LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM BY ALLOWING MORE FLEXIBILITY IN THE AMOUNT OF COMPENSATION A FURLOUGHEE MUST RECEIVE; REQUIRING A FURLOUGHEE TO PAY FOR COUNSEL TO REPRESENT HIM AT HEARINGS; AND CLARIFYING ELIGIBILITY TO PARTICIPATE; AMENDING SECTIONS ~~45-7-306,--46-23-401--THROUGH~~ 46-23-402, 46-23-405, 46-23-411, ~~THROUGH---46-23-413~~ 46-23-422, AND ~~46-23-415-THROUGH-46-23-426~~ 46-23-425, MCA; ~~AND-REPEALING-SECTION-46-23-414,-MCA.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Third Reading

(Strike everything after the enacting clause and insert:)

Section 1. Section 46-23-402, MCA, is amended to read:

"46-23-402. Purpose of prisoner furlough program. (1) The purpose and intent of this part is to:

(a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;

(b) increase their responsibility to society;

~~(c)--provide-for-the-minimum-hourly--wage--required--by law--or--the--prevailing-rate-of-pay-for-persons-employed-in similar-occupations-by-the-same-employer-to-be-paid-to--said convicts-while-so-employed;~~

~~(d)~~(c) make it possible that they may work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.

(2) The prisoner program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.

(3) This part is to be liberally construed to effect the overall objectives set forth in this section."

Section 2. Section 46-23-405, MCA, is amended to read:

"46-23-405. Establishing program -- rules. The department is authorized and directed to establish a furlough program and make rules in accordance with Title 2, chapter 4, to implement and control the same. Rules shall include ~~provisions~~ guidelines for:

(1) ~~working--at--paid-employment-for-a-rate-of-pay-not less-than-the-minimum-hourly-wage-as-required-by-law-or--the~~

REFERENCE BILL

~~prevailing--rate--of--pay--for--persons--employed-in-similar occupations-by-the-same-employer~~ prisoner eligibility;

(2) participating in an educational, treatment, or training program;

(3) approval of supervising agency; and

(4) review of determinations in furlough application."

Section 3. Section 46-23-411, MCA, is amended to read:

"46-23-411. Application to participate -- ELIGIBILITY. Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the furlough program ~~at--least by-the-time-the-inmate~~ if he has served at least one-half of the time required to be considered for parole and qualifies under the rules established by the department."

Section 4. Section 46-23-422, MCA, is amended to read:

"46-23-422. Violation of furlough agreement by prisoner. (1) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency.

(2) If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site

of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner ~~is--entitled--to~~ have may be represented by counsel ~~appointed-to-represent~~ him at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison.

(3) At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."

Section 5. Section 46-23-425, MCA, is amended to read:

"46-23-425. When prisoner not benefiting from program. (1) The prisoner, the department, or the supervising agency may request that a conference be held with the department,

the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training if the prisoner:

(a) while not disabled from working by temporary illness, is unemployed for a period of 30 days or more after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to any union to which the prisoner belongs;

(b) has become so disabled as to be unemployable; or

(c) is on an educational furlough and has demonstrated for a period of 6 weeks or more that he is unable to benefit from schooling, treatment, or training.

(2) At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference.

(3) If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may request a hearing by the board of pardons to determine an alternate proposal. In this hearing the prisoner ~~is entitled to have~~ may be represented by counsel ~~appointed to represent him~~ at his own expense. Upon determining that the prisoner is not

benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to the prison."

-End-